

## **Superfund Report - 05/28/2012**

### **EPA Restates Pesticide Cleanup Stance, But Agrees To Weigh Site Factors**

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EPA waste chief Mathy Stanislaus is reiterating the agency's position that residual pesticides left in soil, once they no longer serve their "intended use," may be regulated as a hazardous waste but in a recent letter, he told a top Army official, who is concerned that the stance may trigger new cleanups, that the agency will consider site-specific factors, such as future land use, to determine which sites will actually require cleanups.

"The EPA's position that these pesticides may be subject to corrective action authority under the Resource Conservation and Recovery Act (RCRA) is consistent with longstanding Agency policy," Stanislaus said in an April 30 letter to Katherine Hammack, the Army's assistant secretary for installations, energy & environment. *Relevant documents are available on InsideEPA.com. (Doc ID: 2399723)*

"In addition, as science evolves and new hazards are identified, standards change to address those hazards in our regulatory and cleanup activities to ensure protectiveness. This is not a new set of regulations."

He says regardless of the authority used to conduct cleanup of contamination, the Superfund law's section 120(h) sets down requirements for federal entities conveying contaminated property to a non-federal entity. These require federal agencies to take "all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property," the law says.

But he told Hammack that a recently formed EPA-Defense Department (DOD) workgroup should begin to address the issue by identifying and resolving "site-specific issues to provide more consistency in addressing pesticides."

Stanislaus' letter and an accompanying legal analysis attempt to respond to recent complaints from the military that EPA has been unclear about the extent of its concerns over residual pesticides and what action it wants the Army to take.

Military officials are concerned that EPA is calling for the Army to clean up pesticide residuals at several sites in Kansas that were originally applied on and around buildings to prevent termite damage. Such residual contamination is generally exempted from RCRA cleanup requirements if it is applied in accordance with its "intended use."

Last year, Stanislaus told Kansas' congressional delegation, however, that cleanup is now required because the buildings around which the pesticides were applied are slated for demolition -- so the chemical's intended use is no longer applicable.

But military officials are concerned that EPA is changing its interpretation of its pesticide cleanup policies without a formal rulemaking, setting a dangerous precedent that could result in costly new cleanup requirements. An Air Force official last year warned that EPA's position on the pesticide cleanup issue could open a "Pandora's box" that could require massive and costly cleanups of contaminated former farmland that may be slated for residential development.

They are similarly concerned that EPA may also be changing cleanup requirements as the agency issues new risk assessments for ubiquitous contaminants like trichloroethylene (TCE) and perchloroethylene (*see related story*).

Hammack and other officials have called on Congress to prevent EPA or other regulatory agencies from changing cleanup policies midway through a site cleanup process, whether through a new policy interpretation, such as the pesticide case, or as a result of a revised risk estimate.

Hammack, for example, told a House Appropriations Committee panel March 7 that the Army has a handful of sites at this point "where the regulatory rules have changed while we're in the process of cleanup. So, we have a plan for cleanup that is well underway. It is funded, it is planned, it is scheduled, and then there's a new set of regulations that are dropped in and all of a sudden we have to go to a plan B and completely change."

When asked about the issue during a May 22 conference call, Hammack maintained that proper application of pesticides is not a "hazardous substance," and said the services are continuing their discussions with EPA on the issue.

**But Stanislaus, in the recent letter and legal analysis, counters those remarks --** saying, EPA's policy has not changed on pesticide cleanup, and evolving standards are warranted as science is updated.

In the legal analysis, the agency reiterates its position that pesticides, after being applied for their intended use, "may become 'discarded' at some point in time, and thus become a 'solid waste' under RCRA Section 1004(27)," and subject to corrective action authority.

But EPA adds a caveat -- that the determination of whether pesticides have become "discarded" must rely on site-specific conditions, the analysis says. For instance, at the Kansas Army Ammunition Plant (KAAP) -- the factors such as the intended use of the pesticides to protect the buildings, the fact that the buildings were no longer useable, the plan to demolish the buildings, and the projected land use -- all support a determination that the pesticides will become "discarded" once the property is sold, EPA says.

Further, EPA says when it is determined pesticides have been "discarded" at a RCRA facility, "the level of pesticide contamination in the soils at each facility and other site-specific factors will determine whether corrective action is necessary to assure protection of human health and the environment."

Therefore, EPA says it disagrees with the Army's assertions that the impact of the agency's pesticides cleanup policy will be "widespread." Cleanup will be required in cases where pesticide soil contamination is "sufficiently high to trigger corrective action requirements, and future use of the property could result in exposure," it says.

Further, EPA's analysis clarifies that its policy applies to both federal and private lands.

Stanislaus in the letter also clarifies to Hammack the risk presented by the pesticides found at the Kansas sites in question. He says these include chlordane, aldrin, dieldrin and heptachlor, all of which have been banned since the late 1980s with the exception of some restricted use of heptachlor. Studies have indicated exposure to these pesticides can cause numerous health effects and increased cancer risks, he says, adding he has enclosed additional fact sheets from the Agency for Toxic Substances & Disease Registry on these.

**But he says that the work group EPA and DOD agreed to create during a March 8 meeting** should move forward by "identifying scenarios where pesticides could lead to the need to characterize the area where they were applied to know what steps are needed to protect public health. These areas may involve demolitions, excavations or other site-specific factors such as historical pesticide usage."

In addition, he says the work group should make it an "early priority" to find ways to engage states, tribes and local communities on this, and make information publicly available. These remarks likely respond to recent pressure by activists to EPA and DOD to assert they want a say in talks between EPA and the services as they weigh how to address DOD concerns over the stricter pesticides standards and changing cleanup standards (*Superfund Report*, April 30).

While discussions continue over the policy positions, EPA and the military appear to be moving forward with cleanups at the KAAP site. Stanislaus in the letter says EPA and the Army "have reached agreement on a path forward to address environmental concerns, to include pesticides." -- *Suzanne Yohannan*